

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 530 of 1997

in

SPECIAL CIVIL APPLICATION No 771 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF DECEASED PATEL NAGARBHAI ZAVERBHAI

Versus

VAGHARI NANJI HARKHUBHAI

Appearance:

MR RC JANI for Petitioners

MR PM BHATT for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 17/09/97

ORAL JUDGEMENT(Per: Thakker.J)

By a reasoned order the learned single Judge

confirmed the order passed by the Gujarat Revenue Tribunal (hereinafter referred to as "the Tribunal") by and dismissed the petition filed by the petitioner on March 31,1997.

2. The case of the appellant was that he was a tenant of agricultural land bearing survey no.119 of village Samalpati. .It was his case that his father was a tenant and the orders that he was not a tenant was was contrary to law.

3. The Mamlatdar and Agricultural Lands Tribunal ordered that the father of the appellant was in possession of land under three mortgages entered into in 1946, 1948 and 1949. He was shown as xa mortgagee in possession of the land. In all the three documents it was stated that he was put in possession by executing documents. Thus, from the documents it is clear that the possession was handed over by the mortgagor to the mortgage on execution of document. It appears that a suit was filed by the mortgagor for redemption of mortgage was decreed . But the possession was not handed over to the mortgagor and proceedings has been initiated by the appellant. It was the allegation of the respondent that only with a view to flout the decree passed by the Trial Court to hand over possession by the mortgagee to the mortgagor that the proceedings have been initiated.

3. The learned counsel for the appellant contended that even prior to 1946 not only the father of the appellant was in possession of the land in question but he was in possession as a tenant. When mortgage deeds were executed he was continued to be in possession not only in the capacity as a mortgagee but as tenant as well. Looking to the record, however, there is nothing to show that the father of the appellant was in possession. At the time of hearing of this appeal, certified copies of two pani patraks were shown to us. Learned counsel for the respondent submitted that they were before the Tribunal. He has produced copies thereof. On one of them even survey number of the land is not mentioned. In the other City Survey number of 119 was mentioned in which name of Vaghri Harukhu Kadu is shown. It was a mortgage in which it was mentioned that possession was handed over on that day to the father of the present appellant. Even a statement was recorded of Patel Zaverbhai father of the appellant in which he has stated that he was in possession of the land as a mortgagee and not as a tenant pursuant to which an order was passed by the Mamlatdar as early as in July 26,1961.

It appears that no action was taken against that order and that order has become final.

4. Learned counsel for the appellant no doubt contended that there cannot be estoppel against a statute. For that reliance was placed on various decisions which have been considered by the learned single Judge. He submitted that when he was a tenant under Bombay Tenancy and Agricultural Lands Act, protection of such a statute cannot be taken away by relying upon some statement said to have been made by the father of the appellant. In our opinion the ratio laid down in the above decisions does not apply in the instant case. The statement which has been made by the father of the appellant was that he was in possession as mortgagee and not as a tenant. In view of the above circumstances and the finding recorded by the Tribunal and confirmed by the learned single Judge, it cannot be said that any error of law has been committed by the Tribunal or by the learned Single Judge which requires interference. And the appeal deserves to be dismissed and is accordingly dismissed. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)